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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,654	09/18/2001	Adolf Proidl	AT 000053	7510

24737 7590 04/15/2008
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER	
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ART UNIT	PAPER NUMBER
2151	
MAIL DATE	DELIVERY MODE
04/15/2008	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/954,654
Filing Date: September 18, 2001
Appellant(s): PROIDL, ADOLF

Karen Tang
For Appellant
PROIDL, ADOLF

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/28/07 appealing from the Office action mailed 05/02/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20020059592	Kiraly	5-2002
20050271071	Madhavapedd	5-2005
20020049849	Proidl	4-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 3/20/07 have been fully considered but they are not persuasive.

It is respectfully submitted that claims 1-20 are patentable over Kiraly, AAPI, BI and Madhavapeddi for at least the following reasons. Kiraly is directed to an Internet radio, where forward and past buffers are provided to store data packets to be rendered and that have been rendered, respectively. As recited on page 7, paragraph [0073], when the forward buffer is 'low' as pointed by a rendering pointer 1030 shown in FIG i0, then the Kiraly information receiver and retransmitter device (IRRT) I001 shown in FIG I0 signals its chaincast source to send more data packets. When the forward buffer is 'nearly empty,' as pointed by the rendering pointer 1030, then the IRRT I001 signals a chaincast manager (CCM) to assign a different chaincast source for the IRRT i001. Thus, any signaling for more data or change of data source is in response to the content level of the forward buffer. This is specifically recited in paragraph [0074], where:

[i]n response to the buffer content level falling below a pre-determined threshold value, the present invention re-routes communications between the user devices to provide better communication load sharing across the system. According to the present invention, the transmission buffers of the IRRTs are used to monitor the packet rates. Particularly, each IRRT

monitors a number of unrendered data packets stored within its own transmission buffers. When the number of unrendered data packets falls below a threshold level, the IRRT signals its near-empty condition to the CCM such that a different upstream IRRT can be assigned to it. (Emphasis provided) In summary, Kiraly teaches to request more data or a different data source in response to the buffer content level or number of packets stored in the buffer. ***Kiraly merely monitors packet rates, and the buffer content level or number of packets stored in the buffer. In stark contrast, the present invention as recited in independent claim i, and similarly recited in independent claim ii, amongst other patentable elements, requires (illustrative emphasis provided)*** : quality test means for testing the information data retrieved and received by the information retrieval means and for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value. *Quality test means for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value are nowhere taught or suggested in Kiraly.*

Examiner respectfully traversed the argument: Kiraly disclosed "*Quality test means for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value".* Kiraly disclosed the signal/packet are being stored, transferred, combined, compared, and otherwise manipulated in a computer system (refer to 0042). There is a monitoring process taken place in order for the system to perform the above-mentioned functions. The packets are received are the quality of the received information data, which is being stored in the buffer. When the data in the buffer is low (test is being performed in order to know the buffer is low), the data is to be rendered (refer to 0072,

Lines 3), and then, the data will be retransmitted to another IRRT (supply the activation information/rendered data, to the address retrieval means, refer to 0073).

Kiraly does monitor the data rate (refer to 0073, Lines 22), however,

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., According to the present invention, the transmission buffers of the IRRTs are used to monitor the packet rates.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefore, it is not clear how "***Kiraly merely monitors packet rates, and the buffer content level or number of packets stored in the buffer. In stark contrast, the present invention as recited in independent claim i, and similarly recited in independent claim ii, amongst other patentable elements, requires (illustrative emphasis provided)"*** as indicated by applicant is addressed to. If applicant feel that any particular limitation is important but not being addressed in the claim language, please feel welcome to amend the claims accordingly.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the

references have been cited by the examiner on form PTO-892, they have not been considered.

Such as European Patent Application 00980114.2.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 6-12, 14, and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kiraly (US 2002/0059592).

1. Referring to Claims 1 and 11, Kiraly disclosed an internet receiving arrangement for receiving information data stored in information servers connected to the internet, the arrangement having address retrieval means which, when activation information (i.e., name, address, IP addresses, 0058, 0059) is present, are adapted to retrieve collective address information from an address server (i.e., information transmitter) connected to the internet (refer to 0059, 0060), the collective address information identifying those information from which information data processable by the internet receiving arrangement can be retrieved, and having

information retrieval means for retrieving the processable information data from an information server identified by the retrieved collective address information (i.e., the information transmitter

is the primary broadcast server, where information retrieved from it from the originator, radio broadcaster, etc,. refer to 0079), and having

quality test for testing the information data retrieved and received by the information retrieval means for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value or when no information data processable by the internet receiving arrangement are received from the information server (test indicate where the buffer is low, or near empty, or fall below the threshold, which, buffer comprising the information data, and then supply the activation information/different upstream IRRT signals, refer to 0070, 0073, 0074, and 0075).

2. Referring to Claims 2 and 12, Kiraly disclosed which timer means have been provided which at periodically occurring activation supply the activation information to the address retrieval means in order to retrieve the collective address information (refer to 0054).

3. Referring to Claims 9 and 19, Kiraly disclosed wherein the quality is a measure of is audio data quality (refer to 0070, 0074, 0075).

4. Referring to Claim 10 and 20, Kiraly disclosed wherein the information servers (broadcast server, 0010) are internet radio stations (refer to 0061).

5. Referring to Claims 8 and 18, Kiraly disclosed wherein the information data is audio data (refer to 0098).

6. Referring to Claims 4 and 14, Kiraly disclosed in which the address retrieval means, when the activation information is present (refer to 0073),

Kiraly disclosed transcoding address information (refer to multi-media content) from the address which transcoding address identifies a transcoding server (chaincast server, refer to 0061) which is adapted to transcode information data stored in an information server but not processable by the internet receiving arrangement into information data processable by the internet receiving management, and in which the information retrieval means are adapted to retrieve the information data processable by the internet receiving arrangement from the transcoding server identified by the transcoding address information (refer to 0064).

7. Referring to Claims 6 and 16, Kiraly disclosed in which the address retrieval means, when activation information is present, are adapted to retrieve at least two items of collective address information from an address servers connected to the internet (refer to 0090).

8. Referring to Claims 7 and 17, Kiraly disclosed which internet receiving arrangement is formed by an internet television set adapted to receive and process audio/video data in the form of information data (refer to 0019, 0059).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiraly (US 2002/0059592) in view of Applicant Admitted Prior Art (AAPA, Kerbango Radio, pages 1-3)

9. Referring to Claims 3 and 13, Although Kiraly disclosed the invention substantially as claimed, Kiraly is silence regarding providing entry means for the manual entry of the address information of a further information server have been provided from which information data processable by the internet receiving arrangement can be retrieved.

AAPA, in an analogous art disclosed a system which entry means for the manual entry of the address information of a further information server have been provided from which information data processable by the internet receiving arrangement can be retrieved (tune to the station which want to hear, refer to page 1, par 2).

Hence, providing the manual entry as disclosed by AAPA, would be desired for users to manually enter the destination information.

Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to have modified the system of Kiraly by including the feature that allows user to manually enter the address of desire information in able to reach the proper destination, in this case, a desired radio station.

Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Background Information hereinafter Kiraly (pages 1 and page 2, Lines 1-15) in view of Madhavapeddi et al hereinafter Madhavapeddi (US 2005/0271071).

10. Referring to Claims 5 and 15, Kiraly disclosed internet receiving arrangement during the time the activation information is present (refer to 0062).

Kiraly is silence regarding discloses noise generator means, which noise generator means are adapted to supply noise information to information data processing means.

Madhavapeddi, in an analogous art disclosed a system that employ noise generator under test and supply the noise information to assure the network stabilities (refer to 0062).

Hence, providing the noise generator under test as disclosed by Madhavapeddi, would be desired for user to utilizing the test to see the network stabilities under the test.

Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to have modified the system of Kiraly by including the features which allows the user to constant check the network stabilities in order to take the proper measurements to fix the latency.

(10) Response to Argument

Appellant argues that the cited art of record (Kiraly 2002/0059592) fails to teach or suggest monitors packet rates, and the buffer content level or number of packets stored in buffers

and having quality test means for testing the information data retrieved and received by the information retrieval means

Examiner disagrees.

Kiraly provides a method and system for implement an internet radio device for receiving and transmitting media information.

Kiraly also discloses the alleged missing limitation "having testing means, when the quality of the received information data is below a quality threshold value".

Examiner is interpreting the testing means in lights of appellant's specification. Specifically, the testing means that test the quality data against the quality threshold. Appellant's specification indicates that the quality threshold value may be define as a given packet failure rate, which is a percentage of the data packets expected in the continuous data stream of received audio data, that is allowed to be missed before processing the audio data (pages 6, Lines 32-33, page 7, Lines 1-2). Kiraly, similarly, provides a data received buffer that holds transmitted data, refer to 0070, Lines 1-2 (i.e., continuous data stream), the system in Kiraly's constantly test the quality of the test by monitoring the buffer of IRRT-x (Information receivers and retransmitters). It is understood that the buffer of the IRRT are use to monitor the packet rates (i.e., quality of the received information data), particularly, Kiraly teaches each IRRTs are used to monitor the packet rates stored within its own transmission buffers, when the number of data packets falls below a threshold level (i.e., percent of data stream of received audio data missing, falls below the threshold value), the IRRT signals its near-empty condition to the CCM such that a different upstream IRRT can be assigned to it. This means that the quality of received data (packet rates) falls below the thresholds, it triggers the system sends a signal to the CCM/Chaincast manager in

order to keep alive the transmittion, refer to page 0075-0077 (In another words, Kiraly teaches having quality test means for testing the information data retrieved and received by the information retrieval means and for supplying the activation information to the address retrieval means when the quality of the received information data is below a quality threshold value.).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Karen C Tang/

Examiner, Art Unit 2151

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2151

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